

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 02 2005

STASI L. LOVELL,

Plaintiff-Appellant,

V.

JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,

Defendant-Appellee.

No. 04-35862

D.C. No. CV-03-810-REJ

MEMORANDUM^{*}

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Argued and Submitted November 16, 2005
Portland, Oregon

Before: KLEINFELD and GRABER, Circuit Judges, and MOSKOWITZ,^{**}
District Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

Claimant Stasi L. Lovell appeals from the district court's decision affirming the Commissioner's denial of her application for Supplemental Security Income benefits. We reverse and remand for an award of benefits.

The district court erred in holding that Lovell had failed to exhaust her administrative remedies with respect to the issue of whether she met Listing 12.05(C), 20 C.F.R. Part 404, Subpart P, Appendix 1. The issue of whether Lovell's impairment met or equaled *any* of the listings in Appendix 1 was before the ALJ and was decided against Lovell. Accordingly, *Meanel v. Apfel*, 172 F.3d 1111 (9th Cir. 1999), is distinguishable, and Lovell was not precluded from raising the issue before the district court.

Furthermore, the ALJ's implicit finding that Lovell did not meet Listing 12.05(C) is not supported by substantial evidence. The record establishes that Lovell satisfied the criteria of Listing 12.05(C). She had two valid IQ scores of 60 through 70, additional severe impairments (at least one of which existed prior to her 22nd birthday), and obvious deficits in adaptive functioning.

Because Lovell's entitlement to benefits is clear, we reverse and remand for an award of benefits. *Benecke v. Barnhart*, 379 F.3d 587, 596 (9th Cir. 2004).

REVERSED AND REMANDED.